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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1963

No. 294

CATHERINE CLINTON, PETITIONER,

vs.

VIRGINIA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

PETITION FOR CERTIORARI FILED JULY 19, 1963
CERTIORARI GRANTED DECEMBER 9, 1963

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN THE SUPREME COURT OF APPEALS OF VIRGINIA AT RICHMOND

Record No. 5558

CATHERINE CLINTON, Plaintiff in Error,

against

COMMONWEALTH OF VIRGINIA, Defendant in Error.

From the Corporation Court of the City of Norfolk
H. Lawrence Bullock, Judge

ORDER GRANTING WRIT OF ERROR AND SUPERSEDEAS —October 3, 1962

Upon the petition of Catherine Clinton a writ of error and *supersedeas* is awarded her to a judgment rendered by the Corporation Court of the City of Norfolk on the 22nd day of March, 1962, in a prosecution by the Commonwealth against the said petitioner for a felony; but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release her bond if out on bail.

[fol. 2]

WARRANT FOR FELONY—November 10, 1961

Commonwealth of Virginia,
City of Norfolk, to-wit:

To any of the Police Officers of the City of Norfolk:

Whereas, C. D. Grant, Police Captain No. Division of Police hereinafter called complainant, of the City of Norfolk, has this day made complaint and information on oath, before me, Leroy T. Cheshire, a Justice of the Peace of said

City, that between October 11th, 1961 and October 25, 1961, in said City Catherine Clinton hereinafter called accused, did unlawfully and feloniously violate section 18.1-208 State Code (Pandering) Place of occurrence: 9630 First View Street. Apt. 103 and other places and whereas I see good reason to believe that an offense has been committed:

These are, therefore, in the name of the Commonwealth of Virginia, to command you forthwith to apprehend and take before the Police Judge of said City in the Municipal Court, Part One, thereof the body of the said accused to answer said complaint, and be further dealt with according to law;

And moreover, upon the arrest of the said accused, by virtue of this warrant, I command you in the name of the Commonwealth of Virginia, to summon to appear at the same time and place to testify as witnesses on behalf of the Commonwealth touching the matter of said complaint, the above named complaint and the following persons:

and have there and then this warrant with your return thereon.

Given under my hand and seal this 10th day of November, 1961.

Leroy T. Cheshire (Seal)
Justice of the Peace.

ORDER OF POLICE JUDGE SENDING WARRANT TO GRAND JURY —November 10, 1961

Upon hearing the evidence on the foregoing charge, the above mentioned accused is sent on to the Corporation Court of the City of Norfolk . . . , to the next term thereof, to-wit: the first Monday in December, 1961, to answer any indictment found against him and the witnesses above named [fol. 3] were severally duly recognized each in the sum of One Hundred Dollars payable to the Commonwealth of Virginia, for their appearance before the Grand Jury of said Court to give evidence of said charge, and not to depart hence without leave of Court.

Given under my hand this 10th day of November, 1961.

Llewellyn S. Richardson, Police Judge.

(on back)

Executed by arresting the within named accused this 10th day of November, 1961.

C. D. Grant, Police Officer.
E. M. Pugh, Police Officer.
N. B. Rogerson, Police Officer.

Complainant Was Notified.

* * * * * * *

IN THE CORPORATION COURT OF THE CITY OF NORFOLK

INDICTMENT

The Grand Jurors of the Commonwealth of Virginia in and for the body of the City of Norfolk, and now attending the said Court, at its December term, 1961, upon their oaths, present that Catherine Clinton, alias Katherine Clinton to-wit on the 25th day of October in the year 1961, and other days within two weeks next prior thereto, in the said City of Norfolk feloniously did knowingly receive money from the earnings of one Katherine R. Taylor, a female, then and there engaged in prostitution, the said money so received as aforesaid not being for a consideration deemed good or valuable in law, in violation of Title 18.1-208 of the Code of Virginia of 1950, as amended, in [fol. 4] such cases made and provided, against the peace and dignity of the Commonwealth of Virginia.

Second Count: And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that the said Catherine Clinton, alias Katherine Clinton, on, to-wit, the 25th day of October, 1961, and other days within two weeks next prior thereto, in the said City of Norfolk, did unlawfully and feloniously place a certain female, to-wit, Katherine R. Taylor, in a house of prostitution with the intent that she, the said Katherine R. Taylor, should live a life of prostitution in violation of Title 18.1-205 of the Code of Virginia of 1950, as amended, in such cases made and pro-

vided, against the peace and dignity of the Commonwealth of Virginia

(on back)

Indictment for Pandering.

A true bill.

....., Foreman.

3-22-62.

We the jury find the defendant guilty as charged and fix her punishment at 5 years imprisonment and a fine of $500.00.

James L. Rowe, Foreman.

* * * * * * * *

IN THE CORPORATION COURT OF THE CITY OF NORFOLK

MINUTE ENTRY OF TRIAL AND DISAGREEMENT OF JURY—February 26, 1962

Catherine Clinton, alias Katherine Clinton, who stands indicted for Pandering, this day appeared in Court pursuant to the terms of her recognizance, and came as well the Attorney for the Commonwealth and the Attorney for the defendant, said Attorney being of her own choosing, and upon being arraigned plead not guilty to the said indictment, and thereupon came twenty lawful persons, free from exceptions, having been obtained from the *Venire Facias* duly directed and issued in accordance with the statute in such cases made and provided and summoned [fol. 5] by the Sergeant of the City of Norfolk, from which panel the Commonwealth and the defendant each alternately struck four, leaving the following jury, to-wit: David W. Agnew, Howard C. Aldrich, Roland Bott, Nelson E. Duffey, Joe K. Eaton, Haralson Gordon, Leo Laub, Thomas R. Mackey, America Marolla, Peter Mathews, Dorsey W. Mead and Edward N. Sizemore, Jr., who were sworn the truth of and upon the premises to speak, and having fully heard the evidence and argument of counsel, retired to their Chamber, and after some time returned into Court and stated that they were unable to agree upon a verdict, whereupon Roland Bott, one of the jurors, was

withdrawn and the remaining jurors were discharged from further consideration of this case. And this cause is continued and the prisoner permitted to depart pursuant to the terms of her recognizance.

* * * * * * *

[fol. 7]

IN THE CORPORATION COURT OF THE CITY OF NORFOLK

MINUTE ENTRY OF TRIAL—March 22, 1962

Catherine Clinton, alias Katherine Clinton, who stands indicted for Pandering, this day again appeared in Court pursuant to the terms of her recognizance, and came as well the Attorney for the Commonwealth and the Attorney for the defendant, and the defendant having been heretofore arraigned and her plea of not guilty entered of record, thereupon came twenty lawful persons, free from exceptions, having been obtained from the *Venire Facias* duly directed and issued in accordance with the statute in such cases made and provided and summoned by the Sergeant of the City of Norfolk, from which panel the Commonwealth and the defendant each alternately struck four, leaving the following jury, to-wit: Julius Barker, Marshall J. Beasley, Gregory M. Bell, John J. Dozier, Larent G. Halstead, John R. Respass, D. Hill Hollomon, Jr., John H. Rouse, W. Frederick McNeer, Walker C. Newton, Edward T. Rush and James L. Rowe, who were sworn the truth of and upon the premises to speak, and having heard all of the evidence and argument of counsel, returned a verdict in the following words, "We the jury find the defendant guilty as charged and fix her punishment at 5 years imprisonment and a fine of $500.00." Thereupon the defendant, by counsel, moved the Court to set aside the verdict of the jury and grant her a new trial on the grounds that said verdict is contrary to the law and the evidence, which motion having been heard by the Court is overruled, to which action of the Court the defendant, by counsel, duly excepted. Whereupon it being demanded of her if anything for herself she had or knew to say why the Court should not here and now proceed to pronounce judgement against her according to [fol. 8] law, and nothing being offered or alleged in delay of judgment, it is therefore considered by the Court that

the said Catherine Clinton, alias Katherine Clinton, be confined in the Penitentiary of this Commonwealth for the term of Five Years and fined the sum of $500.00, subject to a credit of no days spent in jail awaiting trial. Thereupon the defendant, by counsel, moved the Court for time in which to apply for a writ of error to said judgment, which motion is granted and it is ordered that the execution of the aforesaid judgment be suspended for the period of sixty days or until the Supreme Court of Appeals of Virginia deny said writ if prior thereto and her bail bond fixed at $20,000.00.

And the prisoner was remanded to jail.

IN THE CORPORATION COURT OF THE CITY OF NORFOLK

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR— Filed April 20, 1962

To: Mr. W. L. Prieur, Jr., Clerk

The undersigned, counsel for Catherine Clinton, the defendant in the above styled cause, hereby gives notice of appeal from the order entered in said cause on the 22nd day of March, 1962, and sets forth the following assignments of error:

(1) That the Court erred in refusing to grant a mistrial because of the improper and highly prejudicial evidence, over the timely objection made thereto by defense counsel, during the course of the testimony of one S. M. Edwards, who had been called, in the presence of the jury, to testify on behalf of the Commonwealth.

(2) The Court erred in refusing to grant defendant's instructions numbered D-2 and D-3.

(3) That the Court erred in refusing to strike the testimony of Police Officer Beach, and not directing the jury to disregard the same; the Court further erred in overruling the defendant's timely motions to exclude the evidence obtained and made available to the Commonwealth through unlawful search and seizure.

(4) That the Court erred in refusing to grant the motion to *stride* the Commonwealth's evidence on the basis that the [fol. 9] same was insufficient to support a conviction, and that the Court further erred in its failure to set aside the verdict and to grant a new trial on the grounds that the verdict was contrary to the law and the evidence.

Catherine Clinton, By Herbert S. Reid, Jr., Counsel.

Filed 4/20/62.

Ira B. White, D. C.

Excerpts From Transcript of Testimony

MRS. EMILY PORTER, a witness called in behalf of the Commonwealth, having been first duly sworn, was examined and testified as follows:

Direct examination.

Examined by Mr. Whitehurst:
(Commonwealth's Attorney)

Q. State your full name.
A. Emily Porter.
Q. You live where?
A. 9630 1st View.
Q. Is that in the City of Norfolk?
A. Yes, sir, it is.
Q. How do you make your living?
A. I am desk clerk at the Sea Isle Motel.
Q. Where is that located?
A. 315 East Ocean View Avenue.
Q. Mrs. Porter, I show you this registration card marked "C1" and I ask you if you can identify it.
A. Yes, sir.
Q. What is it?
A. It is a registration card for an apartment.
Q. Where?
A. 9630 1st View.
Q. Is that in the City of Norfolk?
A. Yes, sir.

Q. Who rented that apartment?
A. Mrs. Morrison.
Q. Who is Mrs. Morrison?
[fol. 10] A. This is Mrs. Morrison.

(Witness indicates Catherine Clinton, Defendant.)

Q. The defendant? Catherine Clinton?
A. Yes, sir.
Q. I notice the signature of Mr. and Mrs. Charles Morrison. Did you sign that?
A. No, sir. She signed this.
Q. Who signed Mr. and Mrs. Charles Morrison?
A. I think they, well, they were both together, but I think she signed it herself.
Q. They were both here?
A. Yes, sir.
Q. Mrs. Porter, without saying anything, now I ask you to look at the person who just stepped into the room.
A. Yes, sir.

Mr. Whitehurst: He may go out of the room.

Q. Can you identify him?
A. That is Mr. Morrison.
Q. Were they the two who rented this apartment?
A. Yes, sir.
Q. What is the rent for this apartment?
A. That was $25.00 a week. They paid by the week.
Q. Who paid the rent?
A. Mrs. Morrison.
Q. And by Mrs. Morrison, who do you mean?
A. That is Mrs. Morrison there.
Q. Is that the defendant you refer to?
A. Yes, sir.
Q. Who did the talking there when this was rented?
A. Mrs. Morrison.
Q. Answer her counsel's questions.

* * * * * * *

[fol. 11] S. N. Edwards, a witness called in behalf of the Commonwealth, having been first duly sworn, was examined and testified as follows:

Direct examination.

* * * * * * *

[fol. 15] Mr. Whitehurst:

Q. You related the police came. I asked you to go ahead and relate what clothes, if any, the Taylor girl had on at that time.

A. Vaguely, she was in a state of undress at that time.

Q. Answer questions of the defendant's lawyer.

* * * * * * *

[fol. 16] Mrs. Catherine Taylor, a witness called in behalf of the Commonwealth, having been first duly sworn, was examined and testified as follows:

Direct examination.

Examined by Mr. Whitehurst:

Q. State your name, please.

A. Catherine Taylor.

Q. You live where?

A. 5008 Bruce Street.

Q. How old are you?

A. Thirty-eight.

Q. You are thirty-eight years of age. Are you married at this time?

A. Yes, I am.

Q. How many times have you been married?

A. Twice.

Q. How many children do you have?

A. Four at home right now.

Q. How long have you known the defendant?

A. About eleven years.

Q. Did you have a discussion with the defendant at the Colonial Restaurant last year?

A. Yes, sir, I did.

Q. Where is the Colonial Restaurant located?

A. Corner of Colonial and Olney Road.

Q. About when was this conversation, do you know?

A. I believe sometime the 1st of September; somewhere along there.

Q. Of 1961?

A. Yes, sir.

[fol. 17] Q. How did you happen to be there at the time?

A. We had talked over the phone and we had made an arrangement to be there.

Q. Whose idea was it to be there?

A. That was just a place. We both knew where it was. We both had an apartment on the opposite corner one time.

Q. Who called whom?

A. She called me because I had no way of reaching her at home.

Q. She called you. Do you know her voice? Can you identify her voice?

A. Oh, yes.

Q. What did she tell you on the telephone?

A. Well, we just discussed over the phone how long it had been since we had seen each other because we had lost contact with each other for several years and we said we would like to see each other. Like I say, we hadn't seen each other in years and we just agreed to meet somewhere and talk.

Q. Did you know of any particular purpose for your meeting other than what you just said?

A. Just friendship.

Q. Now, will you relate what was discussed?

A. She said she had married "Stormy" in the meantime and how many children I had and just general conversation in the beginning.

Q. Go ahead.

A. Then we finally got around to talking about our financial difficulties and she said she had $1,000.00 fine she had to pay and I was talking about bills which I had to pay and she said that if it was agreeable that she had some numbers that she could contact and we could both make some money.

Q. Did she describe the numbers to contact in any other language?

A. Well, I knew what she was talking about. They would be paid dates.

Q. What else was discussed concerning that?

A. She said she had some very good numbers and if we could get a nice apartment that we could really make some money.

Q. What about the numbers?

A. Sir?

Q. What did she mean by "nice numbers"? Did she describe that?

A. She said she had the best clientele in town; the men [fol. 18] were the best known men in town. The best clientele in town. She said we would have to have a nice place.

Q. I show you this book and ask you if you can identify it.

A. Yes. This is the book that had some of the numbers in it.

Q. Whose book is that?

A. Catherine's.

Q. The defendant's book. When did you first see that book?

A. Down at Ocean View.

Q. Where at Ocean View?

A. You mean the address? 1st View Street is all I know; Apartment 103.

Q. Is that the place where the arrest was made?

A. Yes, sir.

Q. You saw the book there. Under what circumstances did you see it?

A. She gave me some numbers to copy out of here which I wrote in a little blue book and there were some numbers called from here, I believe.

Mr. Whitehurst: Your Honor, we offer this book in evidence.

The Court: "Commonwealth's Exhibit 2."

Mr. Whitehurst:

Q. Any further conversation at Colonial Restaurant?

A. Not there. She contacted me later.

Q. Who was at the restaurant? You and the defendant and who else?

A. Yes; and later on, her husband came in and later on, Mr. Jager came in.

Q. Her husband, what is his nickname?

A. "Stormy."

Q. What is his name, actually?

A. Harry, I believe.

Q. And his last name would be—

A. Clinton.

Q. When did you next talk to the defendant about the subject matter?

A. I imagine a week and a half. She came to my house a week or a week and a half later.

Q. She came to your house a week later. Tell us what took place.

A. She just asked me was I still interested and that we [fol. 19] should get together, and you know, go look for an apartment and I went to her house.

Q. Where did she live?

A. On Olney Road.

Q. All right.

A. I went there one evening and she and I went out looking at different sections of the town.

Q. Go ahead. What happened next in relation to this?

A. We didn't decide on anything that night and we met later on and she contacted me and told me she had this place at Ocean View.

Q. Did you help her rent the place at Ocean View?

A. No, sir.

Q. When did she call you and tell you she had the place at Ocean View?

A. I believe it was around the 1st of October.

Q. What happened next?

A. We went down there and some numbers were contacted. Catherine called different numbers. In other words, she let the men know that she was in business.

Q. Did you hear her actually talk on the phone or to anyone?

A. Yes, sir.

Q. Tell us what the defendant said. You can repeat each word she said.

A. It would be something like that; "This is Kay. I would like to give you my number. I have something nice." She would partly describe the girls.

Q. How would she describe the girls?

A. Small, large, or according to the color of their hair.

Q. Did you know full well what you were doing?

A. Yes.

Q. Do you think you were doing wrong?

A. Oh, of course I know so now. I knew then, but I know more so now.

Q. Why did you do it?

A. The money sounded good and her and I had been friends and she owed this $1,000.00 fine. I thought I could help her and myself both at the same time.

Q. In relation to the financial situation, what was the set-up? What was your pay?

A. The men paid $10.00. I got $5.00 and she got $5.00.

Q. Why did she get half?

[fol. 20] A. Well, she had the upkeep of the apartment.

Q. Don't tell me what you know the situation to be. Tell this jury what she said. Did she say why she got—

Mr. Reid: I object to the leading nature of these questions.

The Court: Nothing leading about it.

Mr. Reid: I wish to save the point.

Mr. Whitehurst:

Q. Did she state why she got half?

A. Yes. She said she had worked a long time for the numbers and I knew the upkeep of the apartment was her's and she had the telephone bill to pay.

Q. Did you pay the phone bill?

A. Oh, no.

Q. Did you pay any of the linen bill?

A. No.

Q. Did you pay any of the rent?

A. No.

Q. Did you have any of the numbers you had worked up yourself?

A. No.

Q. Did you actually fill any dates there?

A. Yes.

Q. In precise terms, what do you mean by filling a date?

A. A man came there. He paid his money and we had sex relations.

Q. Can you relate how many times you had sex relations there?

A. Seven or eight times. I never kept a record.

Q. Did you pay the defendant any money?

A. Yes. Each day I paid her $5.00.

Q. Did you ever visit at her home at this time? By that I mean what dates are you referring to now; about when? Can you describe the dates?

A. The month was in October.

Q. Do you know where the defendant lived in October?

A. Sewell's Point Road.

Q. You mention Olney Road a while ago.

A. She had moved.

Q. Did you ever call her at her home?

A. I couldn't call her. She had a phone she could call out but we could not call in.

[fol. 21] Q. Do you know how that worked or not?

A. I don't know.

Q. On all of the paid dates that you have just described, did you receive $10.00 on every single date you filled?

A. All the dates I filled there.

Q. What do you mean there? Did you fill dates other than there?

A. I went out, yes.

Q. At whose instructions?

A. A call would come in and she told me where to go; Catherine.

Q. How many did you fill that way?

A. One.

Q. Tell us about that.

A. The call came in and I went to this grocery store.

Q. Did you fill it there?
A. Yes.
Q. How much was that?
A. $20.00.
Q. Did you know the person to whom you were going to fill this date? Did you discuss it with the defendant?
A. Yes.
Q. Tell us that total discussion with the defendant.
A. When she told me, I asked her how much it was and she said he had always paid that to her other girls.
Q. That he had always paid that to the others; to whom?
A. The other girls.
Q. Did you ever discuss this subject with her as to a larger apartment, with the defendant?
A. Yes, sir.
Q. Describe that discussion.
A. She said she knew it was just a temporary set-up, where we were, that it wasn't large enough. There was no privacy there and like I said, she had very good customers and that she had to have larger accommodations where more privacy was because th way it was, the phone was tied up.
Q. What do you mean the phone was tied up?
A. Well, if we were filling a date, we would take the phone off the hook.
Q. Did you discuss that with the defendant?
A. About taking the phone off the hook? She told us while a customer was there to take the phone off the hook.
[fol. 22] Q. She told you that. Was there any discussion about dress; clothing?
A. We were to look our best at all times.
Q. What did she say? Tell us her words.
A. I mean for me, myself.
Q. What you heard the defendant say.
A. She said she would like for me to go to the beauty parlor as soon as we got the money and get my hair fixed and for me to look my best at all times; that certain dresses I had she liked better than others and to wear them.
Q. Was there any discussion concerning other girls?
A. Oh, yes. She asked me if I knew of any other girls and I said that I would see. I had a friend. I said I would talk to her.

I said, "I will introduce you to her and you two can take it from there."

Q. Did you introduce her to another girl?

A. Yes. Helen Buckridge.

Q. Was there ever any discussion concerning younger girls?

A. Yes. She said we were nice but the man liked variety and, of course, they liked younger girls, too.

Q. Were you there when Mr. Edwards came in?

A. Yes, I was.

Q. Describe what took place.

A. You mean from the time he called?

Q. No. From the time he came into the building.

A. Betty Johnson and I were there when he came in and he asked for Kay and he said he liked to talk to the girls and meet them and he said he was an insurance man and he met a lot of men who wanted girls and he just wanted to find out what the set-up was and to find out the price and, in other words, just to look us over.

Q. When was the defendant there?

A. She came in about five minutes later. He wasn't there too long before she came in.

Q. What was the discussion then? Tell us what that was.

A. I introduced them and Mr. Edwards gave her his business card and it was just general conversation at first. She told him she was going to get a larger place. In fact, I believe they were going that day to get a larger place.

She told Mr. Edwards if he gave the number out that the person who called should be sure to identify themselves at the apartment there by Mr. Edwards.

[fol. 23] Q. Did you answer the phone thereafter?

A. Yes.

Q. Can you estimate how many times you answered the phone?

A. If she wasn't there, I answered it. If she was there, she answered it.

Q. Did you ever answer the phone when she was there and a Moody Minyard was there?

A. Yes, I did.

Q. Tell us what took place; not what was said on the

phone but what took place between you and the defendant in words.

A. I answered the phone and I told her who the party on there said they were and she said, "That was a call that came in last night." She told me to find out where he worked. He was supposed to have known Moody.

I questioned the man about where he worked and everything and I related it back to Moody and Catherine.

Q. What did the defendant, Catherine Clinton, say?

A. She told me to be careful, to question him, to find out if he knew Moody and where he worked and what building he worked in because he was supposed to work at the Air Station.

I was relaying messages back and forth. I got tired and turned the phone to Moody.

Q. Was that phone conversation finally concluded?

A. Yes.

Q. What was said then?

A. She said, "It must be the law because Moody didn't know the party on the other end and he finally hung up."

Q. Start again in reference to when Mr. Edwards was there and tell us what happened next. You described the conversation while the defendant was there. Tell us what happened after that.

A. She described the other place she used to have and was talking about a girl with red hair.

Then Catherine and Betty left.

Q. Tell us what happened next.

A. Mr. Edwards said that he would love to have a date with me so we both had just undressed when the law broke in.

Q. Do you know how much money you paid to the defendant?

A. Not exactly. I didn't keep any record of it.

Q. Answer her lawyer's questions.

[fol. 24] Cross examination.

Examined by Mr. Reid:

• • • • • • •

Q. Mrs. Taylor, this particular calling was not new with you, was it?

A. I had worked with Catherine in Richmond before.

Q. You had worked yourself before?

A. Not without her, no.

Q. And you both had a joint venture there?

A. Up in Richmond we would fill dates.

Q. How long had it been prior to October 25, 1961 that you had seen Catherine Clinton? I believe you said you met her around the 1st of October?

A. No. Sometime in the month before that; 5th, 6th, 7th; it was a great many years in there.

Q. Isn't it a fact that you had someone leave a number for Catherine Clinton to call you?

A. Helen Buckridge called me at my home and said "Sammy" can't pronounce his last name, but he was in the place where she was working and had mentioned "Big Catherine" and she had heard me mention "Big Catherine." She said he wouldn't tell her where "Big Catherine" was but if I wanted to contact her, Sam would give Catherine my number.

I said, "That's all right." So Sam gave Catherine my number. About two weeks later she called me.

Q. So this Miss Buckridge was the contact between you and Sam for Catherine to get in touch with you?

A. Yes.

Q. Catherine had just come back to town, had she not?

A. I don't know. I know we had lost contact down through the years.

Q. I believe you stated you went to the Colonial Restaurant?

A. Yes.

Q. What was the conversation?

A. In the beginning we talked about her marrying [fol. 25] "Stormy" in the seven years that had gone by and

I had had children; just the general things we had been doing.

Q. Well, now, you say you had lost contact and out of a clear blue sky you were sitting down carrying on a conversation and somebody said, "Let's open up a house"?

A. No. It wasn't in those words. We got to talking about our financial difficulties. One thing led to another. You don't just come out and say, "Let's open up a house of prostitution."

She had a $1,000.00 fine to be paid and I had bills to be paid.

Q. So you came to a mutual agreement you were to open the place?

A. Yes. She said she would call the numbers if I would fill the dates.

Q. I believe the two of you went out looking for apartments?

A. Yes. I had my car.

Q. At this time were you acquainted with a man known as King Jagers?

A. Yes.

Q. Did you know him very well?

A. Yes.

Q. He had an apartment at Ocean View?

A. He had one. Like I told you the last time, I used to go down and cook his meals, clean up the house.

Q. Your husband knew about that?

A. Yes.

Q. Mutual friends?

A. Well, more than friends. We started out that way but it got to be more than that.

Q. Your husband was aware of that?

A. Yes.

Q. Isn't the truth of it that after you were arrested, you went down there and your husband made you give him back the key to his apartment?

A. Yes, I have given him the key since. He didn't make me go. That was my own idea.

Q. Catherine Clinton, at no time, ever tried to entice you to come into a business?

A. No. Nobody twisted my arm.

Q. It was a mutual agreement?

A. Yes.

Q. That both of you were going to do it for your mutual benefit?

[fol. 26] A. That's right. She had the numbers. I needed the money.

* * * * * * *

Q. I think you stated on one occasion you went out on a date?

A. Yes.

Q. You went out one night?

A. Yes. I said one night.

Q. What time was it?

A. I actually went there twice. I filled the date only once. One time Catherine called me at my home and it was around 9:00 o'clock. I told my husband I had to go carry her somewhere and I went to this store and he said, "No; Catherine is mistaken." He wanted a girl for 12:00 o'clock that night. I said, "I can't come back that late at night." So, I went back the next night.

Q. When you went out to the house on this particular night to fill the engagement, did you tell your husband and children where you were going?

A. No. I was out of the house when I filled the date. The night I left the house, I just talked to him. I told my husband I was going to carry Catherine somewhere.

Q. Mrs. Taylor, growing out of the arrest that took place October 25th at Ocean View, how many charges were placed against you?

A. Three.

Q. Has there been any disposition made of these charges?

A. My lawyer told me and I pleaded guilty to one.

Q. What was done on the one you pled guilty? Was anything done about the charge you entered a guilty plea to?

A. It was a mix-up in court that day. I don't know what happened. My lawyer told me to go home. My lawyer said, as I remember, that they would sentence me or whatever they are going to do.

Q. When are you supposed to go back?

A. I don't know. My lawyer will contact me.

[fol. 27] Q. Were you supposed to go back the day before this trial?

A. I don't know why it was continued. My lawyer called me the same day and we were supposed to go to court the next day and he just said that we didn't have to go; that it had been continued.

I said, "When?" He said, "I will contact you."

Q. What disposition was made of the other two charges? Do you know?

A. No. You would have to ask my lawyer. I don't know.

Q. I believe at one time you were, shall we say, operating in Richmond?

A. I don't know just what you would call it. Her and I worked in a hotel there.

The Court: What did you do? Were you a dishwasher there or a waitress or what?

A. No. We were filling paid dates.

The Court: What do you mean by "filling paid dates?" Were you in the parlor?

A. We were having sex relations.

The Court: This is law business. I don't see why you all don't talk about it in law terms.

Mr. Reid: I feel it is enough garbage, Your Honor, as it is.

Q. Have you talked to anybody about this case since the last trial?

A. Have I talked to anybody? Just Mr. Whitehurst.

Q. Let me ask you this. When you were first arrested, what did you tell the police?

A. Nothing.

Q. You didn't tell them a thing in the world, did you?

A. No. I was scared to death. I just wanted to get out of there.

Q. After you talked to your attorney, he talked to some people?

A. I talked to my attorney and he said for me to tell him the truth or he couldn't help me.

Q. Did he advise you he was going to talk to somebody else?

A. No.

[fol. 28] HELEN BUCKRIDGE, a witness called in behalf of the Commonwealth, having been first duly sworn, was examined and testified as follows:

Direct examination.

Examined by Mr. Whitehurst:

Q. State your name.
A. Helen Buckridge.
Q. How old are you?
A. Forty-three.
Q. Do you know Catherine Taylor?
A. Yes, I do.
Q. How long have you known Catherine Taylor?
A. Quite a few years. She used to be my neighbor five, six, or seven or eight years ago.
Q. How long have you known the defendant, Catherine Clinton?
A. I met her last year sometime around September.
Q. Where did you meet her in September?
A. Puritan Restaurant.
Q. Is that cater-cornered across from Lafayette Presbyterian Church?
A. Yes, it is.
Q. Tidewater Drive and Lafayette Boulevard?
A. Yes.
Q. Tell us what transpired between you and the defendant there. Who else was there?
A. Catherine Taylor.
Q. You and Catherine Taylor?
A. Yes, sir.
Q. Tell us what took place.
A. I went up there with Catherine Taylor and she was to meet Catherine Clinton up there and she said that she needed some money and she was going to start operations and she needed some girls.
Q. I didn't catch that. She—you are referring to whom?
A. Catherine Clinton.

[fol. 29] Mr. Reid: Are you stating what Catherine Taylor or Catherine Clinton—

A. No, sir. This is what was talked about in the car on the parking lot at the Puritan Restaurant.

Mr. Whitehurst:

Q. You are quoting the defendant now?
A. Yes, sir.
Q. Continue.
A. When we got there in the car, Catherine Taylor introduced me to Catherine Clinton. She was telling me that she needed money and she had a fine to pay and that she was going to start operations again if she could get some girls and get a place.
Q. Was going to start operations again if she could get some girls and a place?
A. Yes, and she wanted to know if I was interested.
Q. What did you tell her?
A. I told her at the time I didn't know whether I could but I needed money and I would try.
Q. Any further discussion there?
A. No, I don't believe so; not at that drive-in right then.
Q. When did you next talk to the defendant?
A. We left there and went down to my house.
Q. Any further discussion there about this subject?
A. Yes. She told us that she wanted to get a nice apartment because she had to as she had more or less well-to-do people that she knew from the past. She had their numbers and she would contact them.
Q. Any further discussion?
A. Not at my house then, no.
Q. When did you next talk to the defendant?
A. I had talked to her, I guess, about other things. Different times when she called, we would talk.
Q. When did you next talk to her about this subject?
A. Right after she had gotten the place, the apartment, she called me and told me she had the apartment.
Q. You called her?
A. No, sir. She called me.
Q. She called you?
A. Yes, sir. I had no way of contacting her.
Q. She said what?

A. That she had gotten an apartment and a telephone.
[fol. 30] Q. Did she tell you where she had gotten it?
A. Yes, sir. She said it was out at Ocean View.
Q. Did you go to that apartment?
A. Yes. One day after work I met her at Ward's Corner and she and her husband drove me out to show me where the apartment was.
Q. How long did you stay at that apartment?
A. That day you mean?
Q. The total time.
A. I was only out there two or three times.
Q. What hours were you there?
A. From about 5:00 o'clock until maybe 8:00, 9:00, 10:00.
Q. What hours was Catherine Taylor there?
A. She was there mornings and afternoon because she had to go home.
Q. Did you actually fill any paid dates yourself?
A. Just one.
Q. Was it there?
A. Yes, sir; at the apartment.
Q. How much was the charge?
A. It was $10.00 and I gave her $5.00 of it.
Q. You gave who?
A. Catherine Clinton.
Q. Did you have any discussion with the defendant about a larger apartment?
A. Yes, sir. She said she needed a larger place and more girls as soon as she got started and had gotten in contact with some of the customers she knew.

The Court: What did you give her the $5.00 for?

A. Because she had to pay the rent on the apartment and the phone bill and all and she said she deserved half because she was paying the expenses.

The Court: Half of what?

A. Half of what we got because she had the apartment to keep up.

The Court: How much did you get?

A. I got $5.00.

[fol. 31] The Court: How much total did you get?

A. $10.00.

The Court: For what?

A. One date.

The Court: What is one date? What does that mean?

A. Well—

Mr. Whitehurst: Use the word itself. Describe what a date is. What do you mean?

A. Actually going with a man; having relations with a man.

The Court: What kind of relations?

A. Sexual relations.

The Court: That is so simple. Nobody wants to say it.

Mr. Whitehurst:

Q. The $10.00 itself, how was the price fixed?

A. She made the arrangements. She took the man in the bathroom and talked to him there.

Q. Did you ever discuss a larger apartment with the defendant?

A. She said she was going to get a larger place because she needed a larger one because the one she had was just a one-room one and it could only be one girl in there at the time plus the fact that the phone was tied up while the date was being filled.

Q. What do you mean that the phone was tied up?

A. She told us to take it off the hook.

Q. Take it off the hook when?

A. While the man was there.

Q. Was there ever any discussion concerning younger girls?

A. Yes. She said after she got started that she would have to get younger girls because she figured that was what the men were interested in.

Q. Did you ever discuss clothes with the defendant?

[fol. 32] Mr. Reid: Object to it, Your Honor. It is irrelevant. Nothing to do with the charge before the Court.

The Court: Let's see if it isn't. I heard a hint of it just now.

Mr. Reid: Very well, sir. I withdraw the objection.

Mr. Whitehurst:

Q. Will you answer that question?

A. Yes. One day in particular I wore a street dress. She said it was nice but it wasn't sexy enough.

The Court: What?

A. Wasn't sexy enough.

Mr. Whitehurst:

Q. Any further discussion concerning that?

A. No; except she said we ought to get our hair done and ought to get some of the gray taken out of it.

Q. That you should get some of the gray out of your hair?

A. Yes.

Q. When did you stop doing this?

A. After that date.

Q. Did you know what you were doing?

A. Yes.

Q. Why did you do it?

A. Because I started getting behind in my house payments. The way she described it, I could get money in a hurry and I could get out of debt.

Q. Did you discuss quitting with the defendant?

A. Yes. I told her I couldn't do it any more.

Q. What conversation did you have?

A. She said that was up to me. I said I couldn't go through with it; that I had tried it and it wasn't for me.

Q. Any further discussion on that subject?

A. No.

Q. Did you ever answer the phone there?

A. No; only one time when I believe it was her ex-husband that called.

Q. Was there ever any further conversation concerning answering the phone?

A. Not as far as I was to answer it. She did all the telephoning.

Q. Was there any conversation concerning another place answering the phone?

[fol. 33] A. Yes. I told her that I still needed the money but I would help her any way I could. If she had a place and needed somebody to answer the phone or something, I would do it, and as long as I didn't have to fill a date, I would help her.

Q. Answer her lawyer's questions.

Cross examination.

Examined by Mr. Reid:

* * * * * * *

Q. Were you not the go-between Catherine Clinton and Catherine Taylor to get together?

A. Catherine Taylor had talked about Catherine Clinton, but I believe it was then Catherine Harms and said that she had been good friends and had worked together at some club downtown and said she hadn't heard from her in a long time. She wondered what had ever happened to her.

Mr. Sam Bondeavani.

Q. How do you spell it?

A. That I don't know. I worked with the man. He mentioned the fact that a friend of his had come to town by the name of "Big Catherine." Very few people are called "Big Catherine" or "Little Catherine"; just Catherine this or that, so I associated the name with it.

I mentioned the fact that Catherine Taylor had mentioned she would like to get in touch with her.

Q. That Catherine Taylor would like to get in touch with Catherine Clinton?

A. Yes.

Q. And at this time you didn't know Catherine Clinton?

A. No, I didn't know a thing about her; what she had done or anything.

* * * * * * *

[fol. 34] Officer Earl H. Beach, a witness called in behalf of the Commonwealth, having been first duly sworn, was examined and testified as follows:

Direct examination.

Examined by Mr. Whitehurst:
(Commonwealth's Attorney)

Q. State your name, Officer.
A. Officer Earl H. Beach, Norfolk Police Department.
Q. And your duty assignment?
A. Investigative work.
Q. Did you work with Captain Branch?
A. I did at the time of this case.
Q. In reference to 9630 1st View Street, did you have occasion to go there?
A. I did.
Q. What was your function there?
A. To keep surveillance on an apartment, Apartment 103.
Q. How did you do that?
A. On October 21, 1961, I kept the house under observation from the street.
Q. From the street?
A. Yes.
Q. Later on you kept it from where?
A. From an apartment next door, 102. The apartment in question was 103.
Q. Were you at 102?
A. Yes, sir.
Q. In reference to the 21st, you stated you were on the street?
A. Yes, sir.
[fol. 35] Q. Will you go ahead, sir, and relate what your observations were of the traffic?
A. I arrived at approximately 10:20 A. M., on the 21st at 11:10 A. M. A blue Ford with Wisconsin license 10044 was

parked on the Colonial Store lot, parking lot. At that time a man was seated under the wheel. He began to look at 9630 1st View Street.

He sat in the car for approximately three minutes when a woman came to the window of Apartment 103.

Q. Who was the woman? Do you know?

A. She was later identified as Catherine Clinton. She looked down at the car and she waved and the man in the car waved and approximately four minutes later he got out and went up to the apartment.

The man was identified as Harry Clinton that was in the car.

Q. Go ahead.

Mr. Reid: If Your Honor please, if you would allow me, at this time, I object to this entire line of testimony. We aware of what it amounted to. It is irrelevant, immaterial, and has no probative value to the issue at hand.

The Court: Overruled.

Mr. Reid: I wish to save the point.

Mr. Whitehurst:

Q. Continue, please.

A. Approximately 11:35 P. M., a white male, pardon me, a white female went into 9630 1st View Street, identified as Catherine Taylor. At 11:30 A. M., a white male, wearing work clothes came up in a blue Buick VA132-622. He went up to 9630 1st View Street.

He came out and left at 1:20 P.M. He was identified as Moody Minyard. At 12:00 noon, a white female came out of 9630 1st View Street and went a half block up the street to a bar.

She was identified as Betty Johnson; and at 1:30 P.M., a white female came out of 9630 1st View Street and got into the blue Buick VA161-984, and was identified as Catherine Taylor.

At 2:15 P.M., the blue Ford, Wisconsin license, came back and parked on the rear of Colonial Stores parking lot. At the time, the man, Harry Clinton, he got out and came over to the apartment.

[fol. 36] On the south end, there are steps, brick steps, leading up.

Q. Take a picture and describe to the jury in words the picture of what you are about to say.

Mr. Reid: Identify the exhibit, please.

A. "C-5".

Mr. Whitehurst:

Q. Stand there so the jurors may see.

A. Right here. This exit here would be the south end of the building. Those are the brick steps you can go up with mail boxes right inside the hall here. Brick steps lead upstairs.

These iron steps here are on the north end of the building. You can go up by the iron steps to get up to where the apartments are.

Q. Show them what the rear of the apartment looks like, sir.

Mr. Reid: May I ask you to identify exhibits as you make reference to them so the reporter can get them.

A. The first one is "C-6". This would be in the rear of the apartment house, looking upstairs. The apartments are on the second floor. The first floor is the laundromat.

"C-7" would be the next one. After you get upstairs when you come up from the north to the south end, when you turn to come to the apartment, this would be looking longways here. This would be looking from the north end after you get down the ramp. That leads to the apartment.

"C-8". This is from the rear of the apartment house. The apartment in question is this one here which is Apartment 103. This one here is Apartment 102. This is where I had the apartment under surveillance.

The storm doors on these apartments, when you go up to it, open it, you come back to the right and you have to step inside, and the wooden door, you have to come over behind the storm door to open that just on the opposite side.

"C-9" is another picture of the apartment in the rear.

Mr. Whitehurst: We will pass these around to help the jury.

[fol. 37] Q. Go ahead with your testimony.

A. Harry Clinton started to go up the brick steps on the south of the building. When he did, there was an elderly lady getting mail at the mail box. When he saw her, he came to the circle at the north end and went up the iron steps.

At 3:00 P.M., a white male came out of the apart- [sic] over on the Colonial Stores lot and got in the car and left. At 3:25 P.M., a white male came out of the apartment, Harry Clinton, and went over and got into his Ford and brought it to the front of the Colonial Stores lot and he sat there in the car.

At 3:40 P.M., a white female came out and got into the car with him, which was Catherine Clinton. They both left together.

My next surveillance was October 23, 1961. At this time I was in the apartment next door, Apartment 102. I arrived at this apartment approximately 1:00 P.M. this day.

At that time, 1:00 P.M., the phone rang and a woman answered and stated that she had gone to the store. At 1:20 P.M., the phone rang and a woman answered it. When she hung up, she turned around and told another woman in the apartment that a man in a green and white station—

Mr. Reid: Object unless a proper foundation is laid for it. No foundation is laid for it. It is hearsay testimony and a foundation will have to be laid as to how he could hear from one apartment to the next.

Mr. Whitehurst:

Q. Answer how you could hear from the apartment.

A. Yes, sir. Some of the time I was in the bathroom. From the medicine cabinet you could hear part of the conversation there and I had a device that would amplify the sounds so that you could hear it in the other room.

Mr. Reid: Spiked device?

A. Yes, sir; small device.

Mr. Reid: Object to anything he heard with the spiked device and object to his testimony in its entirety unless he could tell what portion of that he could hear with his ear to the medicine cabinet.

[fol. 38] Mr. Whitehurst: Your Honor, this is also in the next door apartment; listening to what was going on in the apartment that this defendant forged a name. I suggest this is material for the jury to hear. What he can hear, whether he used a device or had a hearing aid or even put on glasses, that gets to the truth and should come in.

Mr. Reid: On the basis of the spiked device, Your Honor, it is an unreasonable seizure under the 4th Amendment of the Constitution. As such I submit to the Court it is not admissible. Secondly, the police officer testified that part of the conversation he could hear through the medicine cabinet.

Unless he can qualify as to what portion of that he heard through that, I submit that his testimony should be stricken en toto.

The Court: Overruled. Exception noted.

Mr. Reid: Save the point, if Your Honor please.

A. At 1:20 P.M., the woman answered the phone and hung up. She told the other woman—

Mr. Reid: Your Honor, there has not been a proper foundation laid for that.

Mr. Whitehurst: Your Honor, this is the apartment that is run and operated and forged to get by this defendant. Everything that goes on in there is very material to this case.

Mr. Reid: Hearsay testimony, if Your Honor please.

The Court: Let me ask you this. Do you claim that something that somebody else other than herself said in her absence is admissible?

Mr. Whitehurst:

Q. Just repeat what you heard the defendant say, Officer. Don't testify to anything but what you heard the defendant say. Relate the traffic, but only what was said by the defendant.

A. Approximately 2:15 P.M. on the 23rd, a white male came up and entered the apartment. Approximately 3:00 P.M., the same white male, approximately 5 feet 10, 160-170 pounds, light gray sweater, approximately 35 years old, blond hair, left.

3:05 P.M., Catherine Clinton arrived at the apartment. 3:18 P. M., the phone rang. Catherine Clinton answered the phone and she told the party on the other end, she said, "No, Honey. We had one and he was Shore Patrol."

[fol. 39] The Court: What?

A. She said, "We had one and he was Shore Patrol." At 3:30 P.M., the phone rang. Catherine Clinton answered it and she told the party on the other end, she said, "Make it as early as possible as she has to go home."

4:25 P. M., a white male came up, rang the door bell to Apartment 103. The door was opened. The man went in. He asked for a girl to come to his apartment. He told the woman he was talking to that he would—

Mr. Reid: Object. He said he told the woman he was talking to—

Mr. Whitehurst:

Q. The defendant was present?
A. Yes, sir.

Mr. Reid: I withdraw the objection.
The Court: Go ahead.

A. This man stated he would be in his apartment in thirty minutes and he wanted a woman. At that time, Catherine Clinton said that she would send her around. At that time, the white male left and Catherine Clinton followed him out. She came out on the ramp. She had one hand holding the storm door and stood on the ramp.

She looked to the north and to the south and turned around and went back into the apartment.

Q. Continue, sir.

A. The next would be October 24th. On October 24th, I arrived at the apartment approximately 1:07. When I did,

there was a man and a woman in the apartment. At that time I could hear shoes hit the floor and it wasn't long after that that there was a—well, there was a daybed, a sort of a sofa, in the apartment—and I could hear movements on that and I could hear the springs on the sofa squeaking.

At 1:16 P. M., the man and woman went to the bathroom. This time I went to the bathroom and put my ear up to the medicine cabinet.

Q. Don't relate the conversation unless the defendant was there at that time.

[fol. 40] A. No, sir. At 1:27 P.M., this white male left the apartment. He was about 50 or 55 and about 5 foot 9 and weighed about 195 pounds, wearing a red jacket and brown hat.

Approximately 1:35 P.M., a white female in a green coat, white glasses and dark hair left the apartment, got into a 1950 Chrysler; identified as Catherine Taylor.

2:25 P.M., Catherine Clinton arrived at the apartment. When she entered the apartment, she was told by one of the women in the apartment, the girl said, "Bob Merritt called and I told him you would be here at 3:00 or 3:30 at the latest."

2:28 P.M., the phone rang. Catherine Clinton answered the phone and she stated to the party, "Glad you called. I was going to send you home in a cab the other night. Things are slowing down but we are managing to keep our heads above water. Things will be set up tomorrow night."

Approximately 2:37 P.M., a girl identified as Betty Johnson came out of the apartment, went downstairs and met Harry Clinton that was in the blue Ford with the Wisconsin license. She got a package from him and brought the package up to the apartment.

2:44 P.M., the phone rang and Catherine Clinton answered and she stated to the party she was talking to, she said, "You be here at 5:00 o'clock." She said, "I have something working so all of us will have work."

Approximately five minutes after that call, Catherine Clinton went to the phone and I could hear her dialing the numbers. When she got her number, she asked the party, she inquired about an apartment and how much the rent was.

At 3:27 P.M., the phone rang and Catherine Clinton answered the phone and she says, "I don't know a Bob Merritt." Then she paused and said, "What Mr. Cohen?". Then she paused again and she said, "You have Charlie Cohen call me and then you call back."

3:30 P.M., the phone rang. Catherine talked to the party on it and after she hung up, she stated to the other woman in the apartment, she said, "Helen called and will be over at 5:00 o'clock."

At 3:40 P.M., a white male came up and knocked on the door. He was let in the apartment. He was identified as Harry Clinton. This time he and Catherine Clinton got in the conversation. Catherine Clinton was telling him about Bob Merritt called and said, "Charlie Cohen told him to call." At that time Harry Clinton became very ex- [fol. 41] cited. He told Catherine, he said, "Get to the phone and call Charlie and see if he did tell this man to call."

3:47 P.M., Catherine Clinton used the phone. She called and asked for Charlie Cohen and she hung up and told the people in the room he was not in.

3:49 P.M., the phone rang again. Catherine Clinton answered it and she said, "Where are you, Mr. Cohen?". Then she paused and then she said, "You are not Charlie Cohen." She paused again and she said, "I will have to talk to you in person."

At 4:00 P.M., the phone rang, Catherine Clinton answered it, and she said, "Charlie, are you at the store?". She paused and said, "If you give this number out", and she paused again and then she said, "O.K., but always call me first. If he will call, I will be glad to talk to him."

4:07 P.M., Catherine and Harry left the apartment together.

October 25th, at 10:34 A.M., on the 26th of October, a white male entered the apartment. At 10:45 A.M., you could hear the man and the woman up against the wall where the sofa was and everything got quiet and all you could hear were springs on the day bed squeaking.

Approximately 10:52, a man arrived and approximately 11:25 A.M., another man arrived at the apartment. He was let into the apartment and he was identified as a Mr. Edwards.

11:26 A.M., Catherine Clinton arrived at the apartment. They were in there approximately five to ten minutes after Catherine Clinton arrived and Betty Johnson came out of the apartment.

They went downstairs to the parking lot, Colonial Stores parking lot across the street where Harry Clinton was in his blue Ford.

At that time they got into the front seat with him and sat there. At that time was when the arrest was made and Captain Grant and Sergeant Pugh went to Apartment 103 to make the arrest and I went to the Colonial Stores lot and got Catherine Clinton, Harry Clinton, and Betty Johnson.

Q. Answer her lawyer's questions.

Mr. Reid: If Your Honor please, I would like to renew my motion to strike for three reasons; first of which, as I previously stated, the evidence given by the police officer is irrelevant and immaterial. No value whatsoever as far as the application of this charge.

[fol. 42] The Court: Without burdening you to proceed, I think the Court was perhaps in error just now when I ruled in favor of you not admitting hearsay testimony, but as the lawyers well know, hearsay testimony or parties to or up and pursuant to a conspiracy is admissible right on up to a conspiracy.

Mr. Reid: In conspiracy, Your Honor, but this is not a conspiracy.

The Court: I mean a contractual arrangement to carry on a particular proposition. What each party does and says is admissible against the other, but you have been blessed to the extent that I kept it out because the Commonwealth's Attorney in apprehension of what I was going to rule then told the witness only to talk and describe what the defendant said herself.

Mr. Reid: May I ask one question of the Court? Is the Court finding that it was a conspiracy between these three women?

The Court: The Court is not finding a thing, underscored and overscored. The Court will say that the testimony would show an arrangement where, if believed, whereby that would be the case, that there was an agreement to do it.

Mr. Reid: Between the three women, yes, sir. Without going into it, Your Honor, I have made an objection to the officer's testimony.

The Court: Yes. You preserve all your exceptions and objections, Mr. Reid.

Mr. Reid: Yes, sir.

The Court: Of course, you have been blessed to that extent but I overrule you now and you except to whatever it was.

Cross examination.

Examined by Mr. Reid:

* * * * * * *

[fol. 43] Q. This spike, was it driven in the wall?

A. It wasn't driven in.

Q. Stuck in the wall?

A. Yes, sir.

Q. In what portion of the apartment was that?

A. The whole apartment was just one-room efficiency. It would be the wall that was separating the two apartments.

Q. Was it in the center of the wall, the back of the wall, or what?

A. No, sir. It would be closer to the front of the house. It would be a little off from the center of the wall.

Q. And these people you have related are the only people that came and went from the apartment that you specified?

A. That I observed, yes, sir.

Q. Were you in the apartment from the time you have testified to? If you said somebody came and left at a certain time, you were there?

A. Yes, sir.

Q. And these were the only people that came and went?

A. Yes, sir.

Q. Officer Beach, you, of your knowledge, don't know what went on inside that apartment, do you? You are only speculating as to what went on?

A. Yes, sir.

Q. You don't know if they were shaking dice on the bed, playing cards, moving the bed, throwing shoes on it?

A. I don't think they were shooting dice or anything.

Q. From your own knowledge, you don't know what was going on to make the bed squeak, do you?

A. No, sir.

Q. Were you present when the officers subsequently went into the apartment?

[fol. 44] A. I was up to the door with the officers and I left before they went in and I went down to the parking lot.

Q. Did anyone have a search warrant?

A. I couldn't say.

Q. Do you think anyone had a search warrant?

A. I don't know.

Q. Was Captain Grant and the other police officers in your presence, when they were in your presence, was anything discussed about a search warrant?

A. Not in my presence.

Q. There was time to acquire a search warrant, wasn't it?

A. From the time we made the arrest?

Q. You had the apartment under surveillance how many days before making the arrest?

A. Four days.

Q. And from your knowledge, no warrant was secured?

A. I don't know of any.

Q. Where were you at the time of the arrest?

A. I was present when a small window was broken.

Q. How was it broken?

A. With an iron, I believe.

Q. By whom?

A. I don't know, I couldn't say which officer did it.

Q. Anyone knock on the door?

A. I heard the officers say, "Police officers. Open the door."

Q. After the window was opened?

A. After I left and went to the parking lot.

Q. When he said, "This is the police officer," this was after the window was broken?

A. Correct.

Q. Did either of the police officers say they had a search warrant?

A. I didn't hear. When they said they were police officers, I went to the parking lot.

Q. You assisted in the physical arrest of whom?

A. I went down and told Catherine and Harry Clinton and Betty Johnson that we were holding them for investigation.

Q. Your remark to them was, "We are holding you for investigation"?

A. It was.

* * * * * * *

[fol. 49]

MOTION TO STRIKE EVIDENCE AND RULING THEREON

Mr. Reid: Very well, Your Honor. Secondly, I would like to renew my motion as to striking the evidence of Officer Beach for the purpose that it was irrelevant, immaterial, and it had nothing to do with the case before the Court.

Also, the evidence of Officer Beach admittedly was obtained in part, not *en toto,* by a listening device which was stuck into the wall.

According to the decision of the Supreme Court of the United States, it was unlawful as search and seizure. According to the search warrant, any evidence received from [fol. 50] the apartment where that book came from would be unlawful seizure. I would like to ask the Court to strike that evidence.

Thirdly, without going into a great deal of argument, I would move the Cour. to strike the entire Commonwealth's case on a failure to present a *prima facie* case. I will not argue the case at great length. The Court has heard it.

I don't feel there has been any corroboration of anything that has been admitted to the Court which the Court labelled as conspiracy, one of three conspirators and if the finding of the Court is that there was a conspiracy between the three of these parties, then the whole case of the Commonwealth must fail.

Mr. Whitehurst: May it please the Court, counsel is just as wrong in quoting you in saying what you have done as he is in relating the conclusion of the facts.

The Court: You have got to separate these things. When I was ruling on Mr. Reid's testimony favorably, you then instructed the officer to proceed.

I ruled hearsay but to not tell anything thereafter. I ruled not to tell anything except what the lady did or said herself.

Then he objected to the sticking of the instrument in the wall, the aid for hearing. So far as I am concerned, what she said is definitely admissible and I believe that I ruled more favorable to Mr. Reid than he was entitled to when I come to think of it.

• • • • • • •

The Court: I will let it go to the jury and that's it. I overrule all motions.

Mr. Reid: I would like the record to show I note my exception.

• • • • • • •

[fol. 54]

IN THE SUPREME COURT OF APPEALS OF VIRGINIA

Record No. 5558

CATHERINE CLINTON

—v.—

COMMONWEALTH OF VIRGINIA

OPINION BY JUSTICE HAROLD F. SNEAD—April 22, 1963

From the Corporation Court of the City of Norfolk, H. Lawrence Bullock, Judge.

Catherine Clinton was indicted on two counts charging (1) that she did feloniously receive money from the earnings of Katherine R. Taylor, who was engaged in prostitution, for a consideration not deemed good and valuable in law in violation of § 18.1-208, Code of 1950, as amended, and (2) that she did unlawfully and feloniously place Katherine R. Taylor in a house of prostitution with intent that she should live a life of prostitution in violation of § 18.1-205. The jury found defendant guilty as charged

under the first count and fixed her punishment at 5 years imprisonment and a fine of $500. The trial court overruled defendant's motion to set aside the verdict on the grounds that it was contrary to the law and the evidence and entered judgment in accordance with the verdict. We granted defendant a writ of error.

The defendant did not testify or offer any evidence in her behalf.

The evidence discloses that the defendant and Mrs. [fol. 55] Katherine Taylor had been friends for quite awhile, but had not seen each other "in years". In September 1961, pursuant to a telephone call made by defendant to Katherine Taylor the parties met in a restaurant in the city of Norfolk. There they had a "general conversation." They discussed their financial difficulties. Defendant revealed that she had a $1,000 fine to pay and Katherine Taylor said she had unpaid bills. Defendant stated that she had "some numbers that she could contact and we could both make some money"; and that "she had the best clientele in town."

About 10 days later defendant went to Katherine Taylor's home to ascertain if she was still interested in the proposition. Later they toured different sections of the city to locate an apartment, but a location was not decided upon. Subsequently defendant advised her that she had rented an apartment at Ocean View. According to the landlord's desk clerk, defendant, who was accompanied by her husband, Harry Clinton, rented the one-room efficiency apartment at 9650 1st View Street in the fictitious name of "Mr. and Mrs. Charles Morrison." Katherine Taylor testified that defendant called "different numbers" to let "the men know that she [defendant] was in business." When asked what her compensation was, she replied that the men paid $10 and that she received $5. Defendant re- [fol. 56] ceived one-half because she had the "numbers" and had to pay the telephone bill and the "upkeep of the apartment." With one exception, all of the engagements Katherine Taylor had with men for sexual intercourse secured by defendant were had at the defendant's apartment. Prostitution was not a new experience for Katherine Taylor. She testified that she had formerly worked with defendant in Richmond.

The defendant's apartment was kept under surveillance by Norfolk police officers for four days, during which time they observed men visit the apartment. Part of the time officer Earl H. Beach was stationed in the adjoining apartment where he heard conversations and sounds which tended to show that the premises were used as a house of prostitution. This evidence was obtained by listening through the medicine cabinet in the wall dividing the two apartments and by an amplifying device "stuck in the wall."

On the morning of October 25, 1961, a man, later identified as S. N. Edwards, entered the apartment. The defendant arrived shortly thereafter. About 10 minutes later she and Betty Johnson left the premises and took a seat in Harry Clinton's automobile which was parked across the street in the Colonial Stores' parking lot. The police officers broke the glass in the door of the apartment, entered and found [fol. 57] Katherine Taylor and Edwards undressed and preparing for sexual intercourse. They, along with defendant, her husband and Betty Johnson, were taken into custody and the indictment of defendant followed.

Here, defendant argues that the trial court erred (1) in refusing to declare a mistrial for admitting certain evidence of S. N. Edwards which tended to show that she formerly operated a house of prostitution at another place; (2) in admitting evidence obtained in the adjoining apartment through the use of a mechanical listening device stuck in the wall which separated the two apartments; and (3) in refusing Instruction No. D-3. These questions will be discussed in the order mentioned.

S. N. Edwards testified that after a telephone conversation with defendant he went to her apartment. There the conversation between the two was "more or less a sparring deal" as he was attempting to identify himself and show he was not connected with law enforcement. He told her that the purpose of the visit was to meet her and look the place over as he had out-of-town friends who might be interested in contacting her.

On direct examination Edwards testified as follows:

"Q. Tell us what actually was said. • • •

[fol. 58] "A. All right; what I said first. I told her that I thought her name was familiar and I asked her if she operated in the other place in town.

"The Court: Operated what? * * * ?

* * * * * * *

"A. Well, a house of prostitution, but those words weren't used. I didn't ask her.

"The Court: What did you use? How did you come to the understanding?

"A. Just what I said, sir, because it was obvious what was going on. It was just a line of conversation and it was taken, well, that both parties knew what was going on.

"She asked me if I had ever visited places down at East Ocean View and I told her I had not and she mentioned some other places, I believe, but I don't recall where it was and I said no, that I had never visited any other places.

"Then I asked her, to prolong the conversation, if she was ever down at Lynnhaven.

"Mr. Reid: Your Honor, I object to this.

"The Court: Overruled.

"Mr. Reid: I save the point.

"A. She says, 'Yes, I did.' I said, 'Well, did you have a young girl working for you that had long hair and wore it up in a pony tail, about five years ago?' Then she mentioned some name which was vague to me because I was just carrying on a conversation and Mrs. Clinton and this Betty were dressing, that is, putting on their hats, getting ready to go out."

The defendant now argues that the Commonwealth was thus allowed to present evidence that five years previously the defendant ran a house of prostitution; and that [fol. 59] to compound the error further evidence was allowed tending to show that the defendant had a young girl working for her at that time.

But she made no such objection. Her objection was to the question asked her by Edwards whether "she was ever down at Lynnhaven." She offered no objection at all to the further question asked her by Edwards about a young

girl working for her about five years ago, and she made no answer to that question.

Rule 1:8 of the Rules of Court requires that the grounds for objection to the admissibility of evidence be stated with reasonable certainty, and if it does not appear from the record to have been so stated, "such objections will not be considered by this Court except for good cause shown or to enable this Court to attain the ends of justice." Here, counsel for defendant stated no reason for the objection to Edwards' testimony under question at the time it was made and offered no motion to strike such evidence. Counsel merely said "Your Honor, I object to this." After the objection was overruled, counsel stated "I save the point."

Moreover, Katherine Taylor thereafter testified without objection that defendant told her before the apartment was rented "she had the best clientele in town." She stated that defendant during her conversation with Edwards [fol. 60] "described the other place she used to have and was talking about a girl with red hair." On cross-examination she testified that she had "worked with" defendant in Richmond. The time was not designated, but it must have been several years prior to this incident because she had previously stated that she had not seen defendant "in years."

Helen Buckridge said she had only one "paid date" in the apartment for which she received $10 and that she gave defendant one-half of it. At the time she was introduced to defendant, she stated that defendant told her "she needed money and she had a fine to pay and that she was going to start operations again if she could get some girls and get a place." There was no objection made to this testimony. The testimony of Helen Buckridge and Katherine Taylor clearly established that defendant had formerly operated such an illicit business.

Aside from the fact that the grounds for the objection to Edward's testimony were not stated at the time the objection was made, there has been no good cause shown why the requirement of Rule 1:8, *supra,* should not be applied. The evidence amply supports the conviction of the defendant and it is not necessary to disregard the requirement to state the grounds for objection with reasonable certainty in order to attain the ends of justice.

[fol. 61] Here the Commonwealth was not seeking to prove independent and unconnected crimes in violation of the settled principle recently stated in *Fleenor* v. *Commonwealth*, 200 Va. 270, 275, 105 S. E. 2d 160. Evidence of other offenses may be admitted only when it shows motive, intent or guilty knowledge, or is connected with or leads up to the offense for which the accused is on trial, *Colvin* v. *Commonwealth*, 147 Va. 663, 669-70, 137 S. E. 476; or when there is only incidental disclosure of other offenses, *Barber* v. *Commonwealth*, 182 Va. 858, 867, 30 S. E. 2d 565. The evidence now claimed to be error came from the defendant in a conversation with Edwards in which the defendant's object, according to Edwards, was "to make sure I wasn't a member of the law or something like that" and, as stated, the only objection she made was to the question of whether she was ever down at Lynnhaven, to which she replied, "Yes, I did."

At the conclusion of the Commonwealth's evidence, defendant moved for a mistrial on the grounds that the testimony of Edwards relating to the former operation of a house of prostitution was prejudicial and improper and that there was no basis for its admission. This motion and others made at the time were overruled.

Whether a motion for a mistrial should be granted or [fol. 62] refused rests within the sound discretion of the trial court, and the exercise of this discretion will not be disturbed unless abused. *Braxton* v. *Commonwealth*, 195 Va. 275, 279, 77 S. E. 2d 840; *Mack* v. *Commonwealth*, 177 Va. 921, 927, 15 S. E. 2d 62; 23A C. J. S., Criminal Law, § 1384, pp. 1027,-1028. Such a motion should be promptly made after a party has full knowledge of the facts and circumstances relied upon. *Crockett* v. *Commonwealth*, 187 Va. 687, 706, 707, 47 S. E. 2d 377.

We find that it was not reversible error for the trial court to admit Edward's testimony in question, and that the trial court did not abuse its discretion in overruling the motion for a mistrial at the conclusion of the evidence.

The defendant contends that the use by an officer of a mechanical listening device stuck in the partition wall of an adjoining apartment in obtaining evidence constituted an

unlawful search and seizure under the Fourth Amendment to the Constitution of the United States and Section 10 of the Constitution of the State of Virginia. Thus, she says that it was reversible error to admit such evidence.

Goldman v. *United States,* 316 U. S. 129, 62 S. Ct. 993, 86 L. Ed. 1322, involved a situation where Federal agents [fol. 63] placed a detectaphone against a partition wall and heard conversations between members of a conspiracy. There was no physical invasion of the premises occupied by defendant in obtaining this evidence. The court held that the questioned evidence was not inadmissible on the ground that use of the detectaphone was in violation of the Fourth Amendment.

The defendant relies heavily upon *Silverman* v. *United States,* 365 U. S. 505, 81 S. Ct. 679, 5 L. Ed. 2d 734. There the petitioners were convicted on an indictment charging certain gambling offenses. Police officers were permitted to testify as to incriminating conversations between the petitioners which were overheard through an electronic listening device. This device was described as a microphone with a spike approximately one-foot long attached to it and it also consisted of an amplifier, earphones and a power pack. The officers entered a vacant house and inserted the spike several inches into a crevice of the party wall and made contact with a heating duct which served the adjoining house occupied by the petitioners. Such contact converted petitioners' entire heating system into a conductor of sound and conversations in the house could be heard through the earphones.

In holding that the use of the device violated the Fourth [fol. 64] Amendment, the court observed: "* * * For a fair reading of the record in this case shows that the eavesdropping was accomplished by means of an unauthorized physical penetration into the premises occupied by the petitioners. * * *." It pointed out that in the *Goldman* case, *supra,* "the eavesdropping had not been accomplished by means of an unauthorized physical encroachment within a constitutionally protected area", and expressly declined to "re-examine" the case.

The *Silverman* case is factually different from the case at bar and it is not controlling. Officer Beach was asked if the instrument used was a spiked device and he responded "Yes, sir; small device." That is the only description given of it. The uncontradicted evidence is that it was not driven into the wall, but was "stuck in" it. This is the only evidence as to any penetration of the party wall and it is reasonable to assume that the penetration was very slight such as one made by a thumb tack to hold the small device in place. The record does not show that the eavesdropping was accomplished through "an unauthorized physical penetration into the premises" occupied by defendant. Thus, we hold that the evidence obtained by means of the listening device did not constitute a violation of the Fourth Amend-
[fol. 65] ment to the Constitution of the United States or Section 10 of the Constitution of the State of Virginia, and that it was not error to admit such evidence.

Finally, defendant argues that the trial court erred in refusing to grant Instruction No. D-3. It reads:

"The Court instructs the jury that, while they may find a verdict upon the unsupported testimony of an accomplice, such evidence is to be received with great caution, and the Court, in this case, warns the jury of the danger of basing a verdict on the unsupported testimony of an accomplice.

"The Court further instructs the jury that the testimony of an accomplice must be received with great care and caution, and if you believe the testimony of an alleged accomplice was false, and that he was induced to testify falsely either by fear of punishment or hope of reward, you must disregard that testimony in its entirety."

The defendant says that she was entitled to this instruction because there was evidence that Katherine Taylor was an accomplice and no direct corroborating evidence that she received money from Katherine Taylor's earnings as a prostitute, and because Katherine Taylor had hope of reward of receiving a lighter sentence on a conviction for which she had not been sentenced.

As a result of the raid on defendant's premises three misdemeanor charges were placed against Katherine

[fol. 66] Taylor. At the time of defendant's trial two of the charges had been dismissed and she had been convicted on a plea of guilty to the third charge, but had not been sentenced as the case had been continued for that purpose. Captain Charles D. Grant testified that she had "been promised nothing" by the police.

If Katherine Taylor was not an accomplice, or if the verdict did not rest on her unsupported testimony, then it was not error to refuse the instruction.

"The general test to determine whether or not a witness is an accomplice is to determine whether he could be indicted for the same offense." *Guthrie* v. *Commonwealth,* 171 Va. 461, 469, 198 S. E. 481, and cases there cited.

State of Arizona v. *Green,* 60 Ariz. 63, 131 P. 2d 411, involved a question of whether the prosecuting witness whose earnings defendant was accused of receiving was an accomplice. In holding that the test to be applied was whether she could be indicted for the same crime, the court stated:

"* * * It is obvious that the prosecuting witness could not have been tried for receiving the earnings of a prostitute from herself. We think, therefore, that she was not an accomplice within the meaning of the statute, * * *." 60 Ariz. at pp. 67, 68, 131 P. 2d at p. 413.

Katherine Taylor, a prosecuting witness, could not have [fol. 67] been legally indicted under § 18.1-208 for receiving money from her own earnings as a prostitute for a consideration not deemed good and valuable in law. Such being the case, under the principle enunciated in *Guthrie* v. *Commonwealth, supra,* she was not an accomplice. Moreover, her evidence was not unsupported, and the trial court was correct in refusing Instruction No. D-3.

For the reasons stated the judgment appealed from is

Affirmed.

[fol. 68]

IN THE SUPREME COURT OF APPEALS OF VIRGINIA

CATHERINE CLINTON, Plaintiff in error,

against Record No. 5558

COMMONWEALTH OF VIRGINIA, Defendant in error.

Upon a writ of error and supersedeas to a judgment rendered by the Corporation Court of the City of Norfolk on the 22nd day of March, 1962.

JUDGMENT—April 22, 1963

This day came as well the plaintiff in error, by counsel, as the Attorney General on behalf of the Commonwealth, and the court having maturely considered the transcript of the record of the judgment aforesaid and arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that there is no error in the judgment complained of. It is therefore adjudged and ordered that the said judgment be affirmed, and that the plaintiff in error pay to the Commonwealth thirty dollars damages, and also her costs by her expended about her defense herein.

Which is ordered to be forthwith certified to the said corporation court.

A Copy,

Teste:

H. G. Turner, Clerk.

Defendant in error's costs:

Attorney's fee	$50.00
Printing brief	40.00
Total	$90.00

Teste:

H. G. Turner, Clerk.

[fol. 70] Certificate to foregoing transcript (omitted in printing).

[fol. 71]

SUPREME COURT OF THE UNITED STATES

No. 294—October Term, 1963

CATHERINE CLINTON, Petitioner,

vs.

VIRGINIA.

ORDER ALLOWING CERTIORARI—Filed December 9, 1963

The petition herein for a writ of certiorari to the Supreme Court of Appeals of the Commonwealth of Virginia is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.